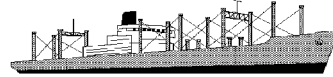




Rollin' On [®]



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WORKER COMPENSATION: COMPLIANCE, SEIZED ASSETS, AND THE CHOOSY INJURED

If you operate a trucking company subject to Oregon's laws, you certainly want to be in compliance with Oregon's worker compensation statutes, rules and regulations. If you run afoul of the legal requirements, the consequences can be quite spendy, and then some.

Noncompliance impact. A trucking company is of course required to maintain workers compensation coverage for its employees. Where there is no coverage, or the coverage lapses, the trucking company becomes what is known as a noncomplying employer. The company is thus exposed to liability for employees' injuries. It is further subject to civil penalties that may be assessed by the Department of Consumer and Business Services, Worker's Compensation Division.

Personal liability. But that is just the beginning. The officers and directors of a corporation, and the members and managers of limited liability companies, are also jointly and severally liable for the claim costs, as well as for civil penalties.

These statutes, rules and regulations provide a strong incentive to toe the line with the state, to be diligent with your operations, and to have good relationships with your fellow officers, directors, members and managers. A lapse in coverage can be devastating. And the state has no obligation to assess the financial consequences proportionately among those legally responsible. It can tag the easiest, most convenient person and then let that person make subrogation, indemnity and contribution claims against the other

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responsible parties.

Assets seized, expense incurred. Meanwhile, the tagged person can find his/her bank account garnished and other assets seized, while simultaneously incurring legal costs while trying to get the other responsible persons to chip in. These two counter-productive developments can really put a hurt on a person.

Compliance benefit. On the flip side of the coin, if the company does comply with the various worker compensation statutes, rules and regulations, the employee cannot sue his/her employer, and instead is limited to making a worker's compensation claim against the employer. As an Oregon court stated a few years back, "the employment relationship is the bedrock of the worker's compensation law."

Identity of employer. A recent Oregon appellate case involved the question regarding the identity of the employer, where there were two related companies involved. The companies were separate companies and each company had its own work crews. However, they would sometimes assign employees to do tasks for the other company.

Naturally, an employee was injured while on the job. The question arose as to which company, for worker's comp purposes, was the employer. The question came up since the injured employee may have options.

Third party claim. Where a company other than the employer is responsible for the injury, the injured employee has the option of filing a

worker's comp claim against his/her own employer, or can instead file a third party claim against the other company, and not be limited to the remedies provided by worker's comp.

Differences in recovery. Years ago I represented a driver who was on the dock of another trucking company when a barrel containing some pretty nasty liquid was tipped over, injuring both my client and a driver of the company on whose dock both drivers were present. Both drivers were transported by ambulance to the hospital and both suffered comparable injuries, which involved inhalation of toxic fumes. Both returned to their respective jobs within a couple of days.

That is where the similarities stopped. My client, who had the option of filing a worker's comp claim against his own company, or of filing a claim, not subject to worker's comp, against the company on whose dock he was located, chose the latter, and received a nice financial settlement. The other driver received a couple days off with pay, and maybe a kick in the pants.

Pick your spots. So if you are the employee, if you have the option of the place where you get hurt, or who injures you, you want to get hurt on some other company's property or by some other company employee. That way you have the option of either filing a worker's comp claim with your own employer, or filing a direct claim against the other company.

Parting comments. As an employer, be in compliance, and have safeguards in place to remain in compliance. As an employee, be choosy about where you get hurt and by whom. Might as well make it count.

That's it for now. Until next time, keep the cargo *rollin'*!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation